

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Martha Jane Toy, individually, and as Executrix and  
Personal Representative of the Estate of Russell B. Toy,  
deceased,

Plaintiffs,

v.

Plumbers & Pipefitters Local Union No. 74 Pension Plan,  
Trustees of Plumbers & Pipefitters Local Union No. 74  
Pension Plan, Health and Welfare Plan, Local 74, Welfare  
Benefit Plan, Life Insurance Plan, Local 74, Welfare  
Benefit Plan, Life Insurance Plan, Local 74, Insurance  
Plan, Administrators of Pension and Welfare Plans,  
Trustees of Plumbers & Pipefitters Local Union No. 74  
Welfare Plan, Plan Administrator of Pension & Welfare  
Plans, Insurance Plans, and Health and Welfare Benefit  
Plan,

Defendants.

C.A. No. 05-cv-1814

**AFFIDAVIT OF SCOTT ERNSBERGER IN  
SUPPORT OF DEFENDANTS' MOTION TO DISMISS**

STATE OF DELAWARE )  
 ) ss:  
COUNTY OF NEW CASTLE )

The undersigned, being duly sworn according to law, does hereby depose  
and say:

1. I, Scott Ernsberger, am an employee of GEMGroup LP whose  
office is located at the Brandywine Corporate Center, 650 Naamans Road, Suite 303,  
Claymont, Delaware 19703. I am in charge of the Funds' accounts and have been since  
1990.

2. The Plumbers & Pipefitters Local Union No. 74 Pension Plan  
("Pension Plan") and Plumbers & Pipefitters Local Union No. 74 Welfare Plan ("Welfare

Plan") (collectively the "Funds") are Taft-Hartley multi-employer plans that were established pursuant to the Collective Bargaining Agreement between the Plumbers & Pipefitters Local Union No. 74 ("Union") and the Delaware Mechanical Contractors Association ("Association"). Participation in the Funds is limited to those individuals who work in employment covered by the Collective Bargaining Agreement.

3. The Joint Board of Trustees of the Funds ("Trustees") are appointed by the Union and the Association, each of whom appoint an equal number of Union and management representatives to serve as trustees.

4. In 1985, the Trustees retained GEMGroup LP as the Fund Manager for the Funds. GEMGroup has continued to act as the Fund Manager continuously since 1985.

5. As Fund Manager, GEMGroup administers the Funds at its office in Claymont, Delaware. GEMGroup manages the business and day to day operations of the Funds in the Claymont office and all of the employees of GEMGroup who administer or manage the Funds are employees in that office.

6. The Funds are managed through bi-monthly meetings of the Trustees. All of the business of the Funds is conducted at these bi-monthly meetings of the Trustees including all decisions regarding the eligibility and qualification requirements of participants to receive Funds benefits, including all appeals of those decisions. These bi-monthly meetings are held in various locations in Delaware.

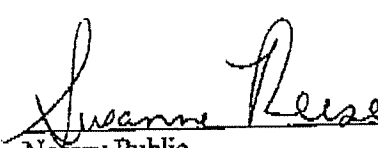
7. All of the Funds' documents and records are maintained and stored by GEMGroup LP's office in Claymont, Delaware.

8. Russell B. Toy ("Mr. Toy"), deceased, was a member of the Funds and received pension benefits from the Funds at 1222 Slaughter Station Road, Hartly, Delaware 19953. Martha J. Toy ("Mrs. Toy"), Mr. Toy's widow, currently receives survivor's benefits from the Funds at 1222 Slaughter Station Road, Hartly, Delaware 19953.

9. The decisions to deny Mr. and Mrs. Toy's application for additional pension benefits under the Pension Fund, survivor benefits under the Pension Fund, medical benefits under the Welfare Fund, and life insurance benefits under the Welfare Fund were made by the Trustees at meetings that occurred in Delaware.

  
\_\_\_\_\_  
Scott Ernsberger

SWORN TO AND SUBSCRIBED before me, this 5<sup>TH</sup> day of July, 2005.

  
\_\_\_\_\_  
Susanne Reese  
Notary Public

My Commission Expires: 11/13/2006

SUSANNE REESE  
NOTARY PUBLIC  
STATE OF DELAWARE  
My Commission Expires Nov. 13, 2006